



**U.S. Citizenship  
and Immigration  
Services**

**Non-Precedent Decision of the  
Administrative Appeals Office**

In Re: 7351308

Date: APR. 30, 2020

Appeal of Texas Service Center Decision

Form I-140, Immigrant Petition for Alien Worker (Advanced Degree, Exceptional Ability, National Interest Waiver)

The Petitioner, a semiconductor research engineer, seeks second preference immigrant classification as a member of the professions holding an advanced degree, as well as a national interest waiver of the job offer requirement attached to this EB-2 classification. *See* Immigration and Nationality Act (the Act) section 203(b)(2), 8 U.S.C. § 1153(b)(2).

The Director of the Texas Service Center denied the petition, concluding that the Petitioner qualified for classification as a member of the professions holding an advanced degree, but that he had not established that a waiver of the required job offer, and thus of the labor certification, would be in the national interest.

On appeal, the Petitioner submits additional documentation and a brief asserting that he is eligible for a national interest waiver.

In these proceedings, it is the petitioner's burden to establish eligibility for the immigration benefit sought. Section 291 of the Act, 8 U.S.C. § 1361. Upon *de novo* review, we will dismiss the appeal.

**I. LAW**

To establish eligibility for a national interest waiver, a petitioner must first demonstrate qualification for the underlying EB-2 visa classification, as either an advanced degree professional or an individual of exceptional ability in the sciences, arts, or business. Because this classification requires that the individual's services be sought by a U.S. employer, a separate showing is required to establish that a waiver of the job offer requirement is in the national interest.

Section 203(b) of the Act sets out this sequential framework:

- (2) Aliens who are members of the professions holding advanced degrees or aliens of exceptional ability. –

(A) In general. – Visas shall be made available . . . to qualified immigrants who are members of the professions holding advanced degrees or their equivalent or who because of their exceptional ability in the sciences, arts, or business, will substantially benefit prospectively the national economy, cultural or educational interests, or welfare of the United States, and whose services in the sciences, arts, professions, or business are sought by an employer in the United States.

(B) Waiver of job offer –

(i) National interest waiver. . . . [T]he Attorney General may, when the Attorney General deems it to be in the national interest, waive the requirements of subparagraph (A) that an alien’s services in the sciences, arts, professions, or business be sought by an employer in the United States.

While neither the statute nor the pertinent regulations define the term “national interest,” we set forth a framework for adjudicating national interest waiver petitions in the precedent decision *Matter of Dhanasar*, 26 I&N Dec. 884 (AAO 2016).<sup>1</sup> *Dhanasar* states that after a petitioner has established eligibility for EB-2 classification, U.S. Citizenship and Immigration Services (USCIS) may, as matter of discretion<sup>2</sup>, grant a national interest waiver if the petitioner demonstrates: (1) that the foreign national’s proposed endeavor has both substantial merit and national importance; (2) that the foreign national is well positioned to advance the proposed endeavor; and (3) that, on balance, it would be beneficial to the United States to waive the requirements of a job offer and thus of a labor certification.

The first prong, substantial merit and national importance, focuses on the specific endeavor that the foreign national proposes to undertake. The endeavor’s merit may be demonstrated in a range of areas such as business, entrepreneurialism, science, technology, culture, health, or education. In determining whether the proposed endeavor has national importance, we consider its potential prospective impact.

The second prong shifts the focus from the proposed endeavor to the foreign national. To determine whether he or she is well positioned to advance the proposed endeavor, we consider factors including, but not limited to: the individual’s education, skills, knowledge and record of success in related or similar efforts; a model or plan for future activities; any progress towards achieving the proposed endeavor; and the interest of potential customers, users, investors, or other relevant entities or individuals.

The third prong requires the petitioner to demonstrate that, on balance, it would be beneficial to the United States to waive the requirements of a job offer and thus of a labor certification. In performing this analysis, USCIS may evaluate factors such as: whether, in light of the nature of the foreign national’s qualifications or the proposed endeavor, it would be impractical either for the foreign national to secure a job offer or for the petitioner to obtain a labor certification; whether, even assuming

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<sup>1</sup> In announcing this new framework, we vacated our prior precedent decision, *Matter of New York State Department of Transportation*, 22 I&N Dec. 215 (Act. Assoc. Comm’r 1998) (*NYSDOT*).

<sup>2</sup> See also *Poursina v. USCIS*, No. 17-16579, 2019 WL 4051593 (Aug. 28, 2019) (finding USCIS’ decision to grant or deny a national interest waiver to be discretionary in nature).

that other qualified U.S. workers are available, the United States would still benefit from the foreign national's contributions; and whether the national interest in the foreign national's contributions is sufficiently urgent to warrant forgoing the labor certification process. In each case, the factor(s) considered must, taken together, indicate that on balance, it would be beneficial to the United States to waive the requirements of a job offer and thus of a labor certification.<sup>3</sup>

## II. ANALYSIS

The Director found that the Petitioner qualifies as a member of the professions holding an advanced degree.<sup>4</sup> The remaining issue to be determined is whether the Petitioner has established that a waiver of the requirement of a job offer, and thus a labor certification, would be in the national interest.

At the time of filing, the Petitioner was employed as a senior engineering manager for [REDACTED], a semiconductor manufacturer, in South Korea.<sup>5</sup> Regarding the Petitioner's claim of eligibility under *Dhanasar*'s first prong, he indicated that he plans to continue his work involving "digital hardware engineering, semiconductor memory engineering, and patent engineering." He asserted that this work is aimed at development of [REDACTED] for mobile device, [REDACTED] for notebook, [REDACTED] and [REDACTED] with high performance. The Petitioner further stated: "My first preferred job in U.S. is research engineering position in Intel. . . . Second preferred job is research engineering position in SanDisk which had contacted with me [*sic*] to recruit. . . . I am also interested in working at a university or national institute in addition to corporations."

The Petitioner also discussed the value and prevalence of digital hardware engineering, semiconductor memory engineering, and patent engineering. For example, he explained that "[d]igital hardware engineering creates digital components for sending, receiving and processing digital information." With respect to semiconductor memory engineering, the Petitioner noted the "ever-increasing demand for higher-capacity semiconductor memory" and the "necessity to consider a fundamentally disparate approach to enhance semiconductor memory technology." Furthermore, regarding patent engineering, he asserted that "[p]atents are a vital asset in the modern business world" because they deter "other market players from simply copying innovative features without making comparable investments in research and development."

The Director issued a request for evidence (RFE) advising the Petitioner of the *Dhanasar* framework. The RFE in part asked the Petitioner to provide "a detailed description of the proposed endeavor and why it is of national importance," including supporting evidence demonstrating "the endeavor's potential prospective impact." In response, the Petitioner asserted: "As a research engineer/manager, my first preferred job in U.S. is research engineering position in multinational corporation such as Intel, Micron and SanDisk. . . . I am also willing to apply [for a] researcher or research professor position, not teaching position, at university and national research institute as second preferred job."<sup>6</sup>

<sup>3</sup> See *Dhanasar*, 26 I&N Dec. at 888-91, for elaboration on these three prongs.

<sup>4</sup> The Petitioner received a Master of Science degree in Electrical Engineering from University of [REDACTED] in August 2005.

<sup>5</sup> He previously worked as a senior research engineer with [REDACTED] from September 2005 until August 2014.

<sup>6</sup> As the Petitioner is applying for a waiver of the job offer requirement, it is not necessary for him to have a job offer from

In denying the petition, the Director concluded that while the Petitioner's proposed work as a research engineer or research professor had substantial merit, he did not offer "sufficient evidence to demonstrate that the prospective impact of his proposed endeavor rises to the level of national importance." Additionally, the Director indicated that the Petitioner had not established that his proposed "work on semiconductor research, design, and development" stands to have "implications beyond his prospective employer or academic institution." For the reasons discussed below, we agree with the Director that the Petitioner has not sufficiently demonstrated the national importance of his proposed endeavor under the first prong of the *Dhanasar* analytical framework.

In the appeal brief, the Petitioner maintains that his discussion relating to the value and prevalence of digital hardware engineering, semiconductor memory engineering, and patent engineering is sufficient to demonstrate the national importance of his proposed endeavor. He further contends that he has offered "a credible and realistic plan to pursue his proposed endeavor with an identified position in the United States."

Regarding the Petitioner's assertion that he intends to pursue a research engineering position with a U.S. multinational corporation such as Intel, Micron and SanDisk, the record does not include documentation of his communications with these companies or their interest in hiring him. Nor is there supporting evidence indicating the type of engineering research he will undertake on their behalf. Likewise, with respect to the Petitioner obtaining a research position at a university or national research institute, the record does not contain documentation from any such U.S. institutions identifying the specific engineering research projects he will pursue on their behalf.

In determining national importance, the relevant question is not the importance of the field, industry, or profession in which the individual will work; instead we focus on the "the specific endeavor that the foreign national proposes to undertake." *See Dhanasar*, 26 I&N Dec. at 889. In *Dhanasar*, we further noted that "we look for broader implications" of the proposed endeavor and that "[a]n undertaking may have national importance for example, because it has national or even global implications within a particular field." *Id.* We also stated that "[a]n endeavor that has significant potential to employ U.S. workers or has other substantial positive economic effects, particularly in an economically depressed area, for instance, may well be understood to have national importance." *Id.* at 890.

To evaluate whether the Petitioner's proposed endeavor satisfies the national importance requirement we look to evidence documenting the "potential prospective impact" of his work. Although the Petitioner's statements reflect his intention to provide valuable digital design and semiconductor memory engineering services for his future U.S. employer, he has not offered sufficient information and evidence to demonstrate that the prospective impact of his proposed endeavor rises to the level of national importance. In *Dhanasar* we determined that the petitioner's teaching activities did not rise to the level of having national importance because they would not impact his field more broadly. *Id.* at 893. Here, we find the record does not show that the Petitioner's proposed endeavor stands to

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a specific employer. However, we will consider information about his prospective positions to illustrate the capacity in which he intends to work in order to determine whether his proposed endeavor meets the requirements of the *Dhanasar* analytical framework.

sufficiently extend beyond his future U.S. employer and its operations to impact his field or the U.S. semiconductor industry more broadly at a level commensurate with national importance.

Furthermore, the Petitioner has not demonstrated that the specific endeavor he proposes to undertake has significant potential to employ U.S. workers or otherwise offers substantial positive economic effects for our nation. Without sufficient documentation regarding any projected U.S. economic impact or job creation attributable to his specific work, the record does not show that benefits to the U.S. regional or national economy resulting from the Petitioner's activities would reach the level of "substantial positive economic effects," so as to demonstrate their national importance under the first prong of *Dhanasar*. *Id.* at 890.

Because the documentation in the record does not establish the national importance of his proposed endeavor as required by the first prong of the *Dhanasar* precedent decision, the Petitioner has not demonstrated eligibility for a national interest waiver. Further analysis of his eligibility under the second and third prongs outlined in *Dhanasar*, therefore, would serve no meaningful purpose.

### III. CONCLUSION

As the Petitioner has not met the requisite first prong of the *Dhanasar* analytical framework, we find that he has not established he is eligible for or otherwise merits a national interest waiver as a matter of discretion. The appeal will be dismissed for the above stated reasons, with each considered as an independent and alternate basis for the decision.

**ORDER:** The appeal is dismissed.